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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,199	01/25/2006	Michiel Errit Roersma	NL 030916	3668
24737 7590 01/15/2010 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER				
CRANDALL, LYNSEY P				
ART UNIT		PAPER NUMBER		
3769				
MAIL DATE		DELIVERY MODE		
01/15/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/566,199

Applicant(s)

ROERSMA ET AL.

Examiner

LYNSEY CRANDALL

Art Unit

3769

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
4. Claims 1-2, 4 and 6-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 6,261,310 to Neuberger et al.
5. [Claim 1] Neuberger discloses an electromagnetic radiation delivery apparatus for skin treatment, the apparatus comprising: a housing (Fig. 3); a radiation delivery head within the housing having a source of electromagnetic radiation (306, Fig. 3); an

emission window in the housing (optics holder 303, Fig. 3) for optically coupling to the source of electromagnetic energy and being able to emit the electromagnetic radiation; a recess in the housing (formed by bell 301, Fig. 3) which is open on one side; vacuum means for lowering pressure inside the recess (vacuum line connects to the system through interface lumen 321, Fig. 3; Col 5, lines 40-54); and a pressure gauge for measuring a Pressure inside the recess (Col 6, lines 44-53). Since the vacuum line connects to the system through lumen (321), given the broadest reasonable interpretation this is considered a vacuum means at least partially in the housing. Applicant has not stated these elements are completely disposed in the housing.

6. The pressure gauge taught by Neuberger is not depicted and therefore it cannot be determined if the gauge is inside the housing or not. The placement of this device is regarded as an obvious design choice. Applicant has given no specific advantage or unexpected results to the placement of these elements within the housing. Therefore it is determined that it would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to make the structure of the device integral and include these elements within the housing to provide a self-contained, easily movable device if so desired (MPEP 2144.04). It is well known in the art to provide elements of a device within a housing of the device or outside depending on the desired size/shape of the device and its intended use.

7. [Claims 2 and 4] Neuberger discloses the pressure within the bell is monitored. Once the bell is pressed onto a treatment site, the air is partly evacuated through this vacuum line. The apparatus is designed so that the laser can only be started once a

specific reduced pressure level is reached. This mechanism ensures that the bell forms an isolated treatment chamber and that no radiation can leave the chamber (Col 5, lines 40-54). If the pressure has reached a specified critical value, the safety mechanism allows the operator to start the laser source (Col 6, lines 48-53); This critical pressure value can be a result of over pressurization (too high) or a vacuum (too low) (Col 8, lines 7-13).

8. [Claims 6-10] Neuberger discloses window (303) surrounded by the recess. The recess is in the shape of a cone or bell; this is interpreted as having a circumferential edge the lies on a place surface, on a concave surface or on a convex surface (rim 20, Fig. 1A). This circumferential edge is flexibly deformable (cushion 22, Fig. 1A).

9. [Claims 11 and 14] Neuberger discloses a laser diode that emits a wavelength between 1 and 3 microns, which inherently includes infrared light (Col 4, lines 53-60).

10. [Claims 12-13] Neuberger discloses a source of electromagnetic radiation that includes an electronic radiation generation means (diode 306) and radiation guiding means (optical fiber 305).

11. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 6,261,310 to Neuberger et al. as applied to claim 1 above, and further in view of U.S. 2002/0022871 to Grahn et al.

12. Neuberger is discussed above, but is silent with regards to a specific threshold pressure value. Grahn discloses a device for applying electromagnetic radiation to the skin that includes a pressure sensor/vacuum gauge (pressure gauge) measuring negative pressure (paragraph 0028 & 0039). Neuberger further defines that negative

pressure is at least 10 mmHg, which equals 13.3 mbar, below ambient pressure (Par 0019). It would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to choose a specific threshold pressure value as taught by Grahn in order to achieve a specific negative pressure and ensure safety.

13. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 6,261,310 to Neuberger et al. as applied to claim 1 above, and further in view of U.S. 6,325,792 to Swinger.

14. Neuberger is discussed above, but is silent with regards to a safety shutter. Safety shutters are commonly known and used throughout the art. For example, Swinger teaches if the beam diameter sensor detects an out-of-range beam (either diameter or intensity profile), the computer control unit can take appropriate action, including activation of the safety shutter **120** (column 19, lines 25-29). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Neuberger's invention with the shutter as taught by Swinger as a means for preventing undesired radiation from reaching the skin.

15. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 6,261,310 to Neuberger et al. as applied to claim 1 above, and further in view of U.S. 6,254,597 to Rizioiu et al.

16. Neuberger is discussed above, but is silent with regards to an exhaust tube. Rizioiu discloses a device that includes an air supply line (11, Fig. 1) that supplies air to a recess (interface between 19 and 21) and then exits out into the environment through exhaust tube (25, Fig. 1). As seen in Fig. 1, exhausts tubes are commonly known and

used in the art. It would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to include an exhaust tube as taught by Rizoiu within the housing of the device taught by Neuberger, in order to make the vacuum system an integral part of the device.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYNSEY CRANDALL whose telephone number is (571)270-7035. The examiner can normally be reached on Monday to Thursday 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hank Johnson can be reached on (571)272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LYNSEY CRANDALL/
Examiner, Art Unit 3769
1/12/2010

/Henry M. Johnson, III/
Supervisory Patent Examiner, Art
Unit 3769